



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: A. Hirsh, Inc.

File: B-271829

Date: July 26, 1996

Michael S. Lubline, Esq., for the protester.

C. Joseph Carroll, Esq., Department of Justice, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly withdrew the small business set-aside of two contract line items (CLIN) set forth in an invitation for bids for horsetail and tampico fiber where the lowest bid for these CLINs submitted by an eligible small business exceeded the bid of an ineligible bidder by 34.5 and 48.8 percent.

DECISION

A. Hirsh, Inc. protests the withdrawal of the small business set-aside applicable to contract line item (CLIN) Nos. 0002 and 0004 in invitation for bids (IFB) No. 1PI-B-1607-95, issued by Federal Prison Industries, Department of Justice, for horsetail and tampico fiber for use in the manufacture of paint brushes and push brooms. Hirsh, a small business concern, contends that the agency improperly determined that the prices submitted by Hirsh for these CLINs were unreasonably high.

We deny the protest.

The IFB provided for the award of firm, fixed-price requirements contracts to the bidder or bidders submitting the low, responsive, responsible bids for each of the IFB's six CLINs. CLINs 0002, 0004, 0005, and 0006 were set aside for small businesses, while CLINs 0001 and 0003, which were for the identical products and estimated quantities as CLINs 0002 and 0004, respectively, were unrestricted.

The agency received four bids in response to the IFB. Hirsh bid a price of \$5.03 per pound for CLINs 0001 and 0002, \$3.60 per pound for CLINs 0003 and 0004, and \$1.54 per pound for CLINs 0005 and 0006. MFC bid a price of \$3.74 per pound for CLINs 0001 and 0002, \$2.42 per pound for CLINs 0003 and 0004, and \$1.69 per pound for CLINs 0005 and 0006. One of the other bidders submitted prices for only CLINs 0005 and 0006, and the other bidder, whose bid was determined nonresponsive, submitted prices for only CLINs 0001 through 0004.

The agency awarded a contract for Hirsh for CLINs 0005 and 0006 as the low responsive, responsible bidder. With regard to CLINs 0002 and 0004, the agency determined that because Hirsh's bids for these CLINs were 34.5 percent and 48.8 percent higher, respectively, than the prices bid by MFC, Hirsh's bids exceeded the fair market price for the items and therefore could not be accepted. The contracting officer thus sought and received the approval of the agency's Small and Disadvantaged Business Utilization Specialist to withdraw the small business set-aside for CLINs 0002 and 0004 on the basis that Hirsh's bids for these CLINs exceeded the fair market price for the items.

Hirsh protests the agency's determination that its prices for CLINs 0002 and 0004 exceeded the fair market prices for these items, and the resultant withdrawal of the small business set aside for CLINs 0002 and 0004. Specifically, Hirsh argues that the agency's reference, in making this determination, to the prices submitted by MFC—which is not a small business—was inappropriate and did not provide a sufficient basis upon which to find that Hirsh's prices were unreasonably high.

Under FAR § 19.506(a), a contracting officer may withdraw a set-aside before award based upon a determination that award to a small business concern would be detrimental to the public interest, because, for example, the award would be made at more than fair market price. The contracting officer has discretion to determine price reasonableness in a small business or other set-aside, and we will not disturb such a determination unless it is unreasonable. White Storage and Retrieval Sys., Inc., B-250133, Jan. 12, 1993, 93-1 CPD ¶ 34. In making a determination of price reasonableness, the contracting officer may consider pricing history, government estimates, current market conditions, or other relevant factors revealed by the bidding, including prices submitted by an otherwise ineligible large business. General Metals, Inc., B-248446.3, Oct. 20, 1992, 92-2 CPD ¶ 256.

The agency's reliance on MFC's ineligible bids for CLINs 0002 and 0004 as a benchmark for price reasonableness was, in our view, reasonable. As stated, MFC's prices for CLINs 0002 and 0004 (the set-aside CLINs) were identical to its prices for the unrestricted CLINs for the same items with the same estimated quantities. Further, MFC's prices were comparable to the independent government estimate for the items, and similar to, although somewhat higher than, the prices bid by MFC in response to previous IFB's. In sum, there is nothing in the record to suggest that MFC's bids for CLINs 0002 and 0004 were artificially low or were otherwise not submitted in good faith, or could not be relied upon as evidence of the fair market price. Given that Hirsh's prices for CLINs 0002 and 0004 exceeded MFC's prices by 34.5 and 48.8 percent, respectively, the agency, with the concurrence of the SBA representative, could reasonably determine that Hirsh's prices for CLINs 0002 and

0004 were in excess of the fair market price. General Metals, Inc., supra (agency properly found small business prices unreasonable where they exceeded the prices submitted by an ineligible large foreign bidder by 14 percent). Consequently, the resultant withdrawal of the small business set-aside for these CLINs was reasonable.

The protest is denied.

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of the United States